

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016031112

ORDER DENYING STUDENT'S
MOTION FOR CONTINUANCE
WITHOUT PREJUDICE

On May 16, 2016, Student filed with the Office of Administrative Hearings a form motion to continue the due process hearing in this case. Student's reason for requesting the continuance is that his teachers have not yet completed ratings scales for which Student's parent is waiting.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The motion is denied for the following reasons. First, Student failed to include a proof of service showing that she served the request for continuance on the attorney representing Poway Unified in this case. Second, Student does not indicate if her parents attempted to meet and confer with the attorney for Poway Unified to determine if Poway Unified opposes or does not oppose the request to continue. Third, Student does not indicate the dates to which she wishes the hearing continued. Fourth, Student does not provide a declaration in support of her motion as required by paragraph eight of the Order Following Prehearing Conference, issued by OAH on May 16, 2016. Finally, Student fails to state why

the failure of teachers to have completed rating scales affects the ability of Student to defend against the issues raised by Poway Unified in this case. The sole issue raised by Poway Unified is whether its February 11, 2016 psycho-educational assessment and report are legally appropriate so that Poway Unified is not required to fund an independent educational evaluation of Student at public expense.

For these reasons, Student's motion to continue is denied, without prejudice. Student may refile a motion to continue once she has met and conferred with the attorney for Poway Unified. Student should indicate in the renewed motion her reasons why she needs a continuance. If she and Poway Unified cannot agree on dates that are within 90 days of the present hearing date, Student may request OAH to fix the dates. Student must serve her renewed motion to continue on Poway Unified's attorney, and attached a proof of service or other declaration showing the service was done.

ORDER

1. Student's motion to continue is denied without prejudice.
2. All hearing dates and timelines shall proceed as presently calendared.

DATE: May 18, 2016

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Peter Paul Castillo

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PETER PAUL CASTILLO

Presiding Administrative Law Judge
Office of Administrative Hearings